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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,329	01/31/2002	Stephen S. Breese	AUS920010980US1	3987
50170	7590	04/11/2005	EXAMINER	
IBM CORP. (WIP)			VU, THONG H	
c/o WALDER INTELLECTUAL PROPERTY LAW, P.C.			ART UNIT	
P.O. BOX 832745			PAPER NUMBER	
RICHARDSON, TX 75083			2142	

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/062,329

Applicant(s)

BREESE ET AL.

Examiner

Thong H Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

1. Claims 1-46 are pending.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-46 are rejected under 35 U.S.C. 102(e) as anticipated by Reps et al  
[Reps 6,070190].

2. As per claim 25, Reps discloses A system for probing services in a network environment, said system comprising:

a script [Reps, an application program, col 9 lines 47-58];

a plurality of probes, including at least one local probe and at least one remote probe [Reps, multiple probes on Internet, col 11 lines 1-14; local and/or remote, col 12 lines 1-15];

means for measuring a client-server application's performance, with said probes, according to said script [Reps, measure of the performance, col 16 lines 53-65]; and

means for collecting in a database data produced by said measuring [Reps, database, col 10 lines 52-57].

3. As per claim 26, Reps discloses means for comparing at least one value, obtained by said means for measuring, with at least one threshold value [Reps, threshold comparison, col 14 lines 62-67].
4. As per claim 27, Reps discloses means for reporting results of said comparing [Reps, threshold comparison, col 14 lines 62-67].
5. As per claim 28, Reps discloses means for utilizing said at least one threshold value derived from a service level agreement [Reps, threshold comparison, col 14 lines 62-67].
6. As per claim 29, Reps discloses means for comparing data from said at least one local probe with data from said at least one remote probe [Reps, the probe and comparisons operations, col 14 line 62-col 15 line 3].
7. As per claim 30, Reps discloses means for measuring availability [Reps, measure of the performance, col 16 lines 53-65; the availability and response time, col 19 lines 54-col 20 lines 8].
8. As per claim 31, Reps discloses means for measuring response time for at least one request [Reps, measure of the performance, col 16 lines 53-65; the availability and

response time, col 19 lines 54-col 20 lines 8].

9. As per claims 32,33 Reps discloses at least one remote probe placed on an intranet/Internet.

10. As per claim 34, Reps discloses a set of transactions that are frequently performed by end users; and said plurality of probes further comprises at least one remote probe placed at each location having a relatively large population of end users [Reps, the data at different levels, col 19 line 54-20 line 8].

11. As per claim 35, Reps discloses at least one of a component probe; an application probe; and a network probe [Reps, the probes and Internet, col 17 lines 45-67].

12. Claims 1-24,36-46 contain similar limitations set forth in the apparatus claims 25-35. Therefore, claims 1-24,36-46 are rejected for the same rationale set forth in claims 25-35.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-46 are rejected under 35 U.S.C. 102(e) as anticipated by Caccavale [5,459,837].

13. As per claim 25, Caccavale discloses A system for probing services in a network environment [Caccavale, abstract], said system comprising:

a script [Caccavale, the Broker-Perormance Mechanism, col 3 line 55-col 4 line 8];

a plurality of probes, including at least one local probe and at least one remote probe [Caccavale, a plurality of probes, col 4 lines 52-seq; a plurality of servers, col 2 lines 1-5];

means for measuring a client-server application's performance, with said probes, according to said script [Caccavale, measures the performance, col 4 lines 53-64; col 8 lines 45-61]; and

means for collecting in a database data produced by said measuring [Caccavale, database, col 10 lines 2-22].

14. As per claim 26, means for comparing at least one value, obtained by said means for measuring, with at least one threshold value.

15. As per claim 27, means for reporting results of said comparing [Caccavale, compared, col 7 lines 1-60].

16. As per claim 28, means for utilizing said at least one threshold value derived from a service level agreement [Caccavale, performance level, col 8 lines 12-30; a threshold, col 9 lines 1-19].

17. As per claim 29, means for comparing data from said at least one local probe with data from said at least one remote probe [Caccavale, a plurality of probes, col 4 lines 52-seq; a plurality of servers, col 2 lines 1-5].

18. As per claim 30, means for measuring availability [Caccavale, measures the performance, col 4 lines 53-64; col 8 lines 45-61].

19. As per claim 31, means for measuring response time for at least one request [Caccavale, measures the performance, response time, col 4 lines 53-64; col 8 lines 45-61].

20. As per claims 32,33 at least one remote probe placed on an intranet and Internet. [Caccavale, a plurality of probes, col 4 lines 52-seq; a plurality of servers, col 2 lines 1-5].

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21. As per claim 34, a set of transactions that are frequently performed by end users; and said plurality of probes further comprises at least one remote probe placed at each location having a relatively large population of end users [Caccavale, transactions, col 10 lines 3-39].

22. As per claim 35, at least one of a component probe; an application probe; and a network probe [Caccavale, a plurality of probes, col 4 lines 52-seq; a plurality of servers, col 2 lines 1-5].

23. Claims 1-24,36-46 contain similar limitations set forth in the apparatus claims 25-35. Therefore, claims 1-24,36-46 are rejected for the same rationale set forth in claims 25-35.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thong Vu, whose telephone number is (571)-272-3904. The examiner can normally be reached on Monday-Thursday from 8:00AM- 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Jack Harvey*, can be reached at (571) 272-3896. The fax number for the organization where this application or proceeding is assigned is 703-872-9306

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval IPAIRI system. Status information for published applications may be obtained from either Private PMR or Public PMR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

***Thong Vu***  
***Patent Examiner***  
***Art Unit 2142***

